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Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Docket No. R-1298

Treas-DO
Department of the Treasury
Office of Critical Infrastructure Protection and Compliance Policy
Room 1327, Main Treasury Building
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220
Attention: Docket No. Treas-DO-2007-0015

Re: Comments on the Joint Proposed Regulation GG, Implementing provisions of the Unlawful Internet Gambling Enforcement Act of 2006 (Federal Reserve Board Docket No. R-1298; Treasury Docket No. Treas-DO-2007-0015)

Dear Sirs and Madams:

This letter is submitted to the Board of Governors of the Federal Reserve System and the Department of the Treasury (collectively, the "Agencies") on behalf of Compass Bank ("Compass"), a wholly owned subsidiary of Banco Bilbao Vizcaya Argentaria, S.A. ("BBVA"), in response to the Agencies' request for comment on their Proposed Regulation concerning the Prohibition on Funding of Unlawful Internet Gambling (the "Proposed Regulation") issued pursuant to the Unlawful Internet Gambling Enforcement Act of 2006 (the "Act").

Compass conducts a regional general commercial banking and trust business at over 400 banking offices located in Alabama, Arizona, Colorado, Florida, Georgia, New

Mexico and Texas. At the close of the 3rd Quarter, 2007, Compass had assets of $42.1 billion and total deposits of $24.6 billion. Pending combinations with other U.S. banks currently owned by BBVA, Compass will rank among the 25 largest U.S. banks by asset size.

Compass appreciates the Agencies' time and effort in preparing the Proposed Regulation. We hope that these comments will be helpful to the Agencies in their effort to balance the Federal Government's desire to prohibit unlawful Internet gambling with the desire of banking institutions to operate efficiently and with a high degree of certainty.

A. Abstract

Compass believes that the Proposed Regulation suffers from two fundamental issues that will cause the regulation to fall short of its goal of prohibiting transactions in connection with unlawful Internet gambling. First, we believe that the Proposed Regulation fails because it does not define the term "restricted transaction." Second, we believe the Proposed Regulation fails because it requires a specific kind of functionality within the payment systems that simply does not exist. While the first issue may be resolved by revisions to the Proposed Regulation, given the methods and manners in which the payment systems operate, it is unlikely that the second issue can be resolved in the foreseeable future. These issues and others are discussed in greater detail below.

B. Restricted Transactions

The Proposed Regulation requires participants in designated payment systems to establish policies and procedures reasonably designed to identify and block or otherwise prevent prohibited transactions in connection with unlawful Internet gambling. Unfortunately, the Proposed Regulation does not define the term "restricted transaction" or specify which gambling activities or transactions are illegal. The summary to the Proposed Regulation provides that this is because the Act itself defers to underlying State and Federal gambling laws in such regard and because determinations under those laws may depend upon the specific facts and circumstances of each transaction (e.g., the location of the parties involved and such location's gambling laws). In our opinion, this omission severely jeopardizes the effectiveness of the Proposed Regulation. Moreover, Compass is highly concerned that this latest exercise in involving banks in government law enforcement activities raises the bar to the point of imposing on banks the unusual task of making legal determinations in the area of criminal laws that are not even in the realm of laws traditionally applicable to banks.

Based on our understanding of the Proposed Regulation, Compass, as a financial transaction provider, will be required to know and apply the laws of each of the fifty states, the laws of the U.S. territories, as well as federal law to: (1) determine, at the outset, if a customer engaging in a transaction is "engaged in the business of betting or wagering"; and (2) determine that any transaction it effects for such a customer is or is not a "restricted transaction" with respect to the states/territories involved. We have not reviewed each of the gambling laws that could come into play under the Act. Nevertheless, we doubt that a majority of the institutions in the U.S. have the resources or requisite legal skill to analyze such laws and apply them to the facts and circumstances of each transaction a customer may conduct.[1] As a result, Compass believes that it is not appropriate for banks to make such determinations, and practically speaking, it would be virtually impossible to attempt to do so in any timely or efficient way. Certainly, any attempt to do so would result in a number of restricted transactions being executed by depository institutions and a number of legitimate transactions being improperly blocked or prohibited.

In light of the foregoing, we request that the Agencies provide a detailed definition of the term "restricted transaction" in the final version of Regulation GG, incorporating federal, state, and U.S. territory law. Such a definition will reduce the burden on institutions subject to Regulation GG, and will mitigate this area of subjectivity currently in the Proposed Regulation.

C. Exempt Payment Systems

Compass agrees with the Agencies' exempting participants in the ACH systems, check collection systems, and wire transfer systems that do not possess a customer relationship with an Internet gambling business. As mentioned earlier, we do not believe the functionality exists within these systems to identify restricted transactions. For example, unlike card systems that may have identifying merchant codes embedded in their transactions, which could be used to identify an Internet gambling business (although not with absolute certainty), no such codes or other merchant identifiers exist in the ACH systems, check collection systems or wire transfer systems.

Given the processes under which these exempted systems work, it is clear they were not designed to identify the particular type of business in which a transacting entity may be engaged, much less whether or not the underlying funds changing hands via such payment systems are related to a specific activity. Accordingly, Compass believes the proposed exemptions extended to those operating in the ACH, check collection and wire transfer systems -- that do not maintain a business relationship with an Internet gambling

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[1] For example, under the Proposed Regulation, the institution must first determine which jurisdiction or jurisdictions are involved in the transaction (i.e., whose laws will govern the transaction - this is a question of law to be determined by such factors as the location of each of the parties to the transaction, where the transaction originates, and where the funds represented by the transaction are received, which can be different jurisdictions if the parties to the transaction maintain deposit accounts in different states). Next, the institution must determine what types of gambling activities are legal or illegal in the jurisdiction in question, and finally, the institution must apply the gambling laws of such jurisdiction to the particular facts and circumstances surrounding the transaction and make a determination as to whether such transaction should be prohibited under the Act as a restricted transaction.

business -- are appropriate and reasonable in light of the current functionality of such systems.

D. Non-exempt Transactions/Payment System Participants

Not exempt under the Proposed Regulation are participants in the designated payment systems having a customer relationship with an Internet gambling business. The ability of these depository institutions to comply with the Proposed Regulation's requirements presupposes two factors: (1) that depository institutions will be able to identify customers as Internet gambling businesses, and (2) that depository institutions will be able to somehow know whether the particular transactions engaged in by these entities are restricted by the Act.

Institutions are currently charged with obtaining some degree of identifying information on their customers under the Customer Identification Program requirements of the Bank Secrecy Act (the "BSA"). This information alone, however, is insufficient to identify an entity as one likely to engage in illegal Internet gambling. Perhaps by conducting enhanced due diligence at account opening can a bank identify those customers engaged in illegal Internet gambling. However, having to conduct enhanced due diligence at each account opening would be a significant burden on banks and customers alike.

With respect to the duty of banks to identify restricted gambling transactions, the enhanced due diligence conducted at account opening will not provide this type of information. It may lead to a suspicion of illegal gambling activity, but it will not identify which transactions are being made in connection with such. Indeed, this requirement is far greater than simply forming a belief that a transaction is suspicious. It is, in effect, a mandate to understand completely the underlying details of each transaction a customer may make. We at Compass can think of no current requirement for banks to know the underlying details behind each and every transaction a particular customer may attempt. Further, we believe this requirement represents a significant shift of enforcement responsibilities from the government to financial institutions.

To illustrate this point, in order for Compass to block restricted transactions as required by the Proposed Regulation, it would have to know with certainty the underlying aspects of each transaction sought by an Internet gambling customer, for example, whether a transaction was related to a benign event, such as a credit for returned merchandise, or whether the transaction was related to a payout for wagering on a sporting event, and thus, (potentially) illegal. As the payment systems currently operate, they simply do not house information such as this; and it is precisely this type of information that would be required to determine whether to prohibit or block a restricted transaction sought by a customer.

In light of the foregoing, Compass believes compliance with the Proposed Regulation is not practical for institutions operating in the ACH, check collection, or wire transfer systems, regardless of which institution maintains the customer relationship. Consequently, we strongly urge the Agencies to consider expanding the exemptions to all transactions occurring under these payment systems, regardless of the status of the banking participant involved.

E. Establishing Reasonably Designed Policies and Procedures

The keystone of the Proposed Regulation is the requirement that participants performing non-exempt functions in designated payment systems establish and implement policies and procedures reasonably designed to prevent or prohibit restricted transactions.

As we understand the Proposed Regulation, an institution is exempt from the Proposed Regulation's requirements if it does not "bank" Internet gambling businesses, and, consequently, it is not required to have any policies and procedures in place related to such. However, if it learns that a customer is conducting illegal gambling transactions through a depository account, the institution will necessarily be a non-exempt participant. Upon learning such, if the institution did not have the policies and procedures in place required of non-exempt participants, it would be in violation of the Proposed Regulation. In light of this quandary, we believe that the requirement for non-exempt participants to establish policies and procedures should allow for a rolling 60-day window in which to comply with the Proposed Regulation. This would give institutions that have made an affirmative decision not to operate outside of the Proposed Regulation's exemptions (i.e., institutions that have made the affirmative decision not to do business with Internet gambling businesses) time to terminate any offending business relationships it may discover in the future and avoid the Proposed Regulation's requirements. A rolling 60-day window would also permit such institutions time to develop the policies and procedures required by the Proposed Regulation necessary to continue any such relationship if they so choose.

With respect to the contents of the required policies and procedures, the Agencies have set forth four elements that should be included: due diligence, remedial action, monitoring, and coding. While some of the specifics with respect to these elements make sense in light of current banking procedures and the intent of the Proposed Regulation, others do not.

The due diligence component requires institutions to adopt a flexible risk-based approach in conducting due diligence, prior to account opening, on a level that is commensurate with the risks posed by each customer. This requirement is similar to that already required of institutions under the U.S.A. PATRIOT Act amendments to the BSA. However, in this context, we believe that performing enhanced due diligence, rather than simple due diligence, will be the only manner in which a bank can discover that a potential customer is engaged in, or likely to be engaged in, illegal Internet gambling. To wit, performing enhanced due diligence will be the norm. While such a burden may be justified under the guise of combating terrorism, it does not seem to be justified in this context and, therefore, appears to us to be unreasonable.

The Agencies expect non-exempt participants to have remedial measures in place if a participant learns that one of its customer relationships is being used to process restricted transactions. Given the burdens that the Proposed Regulation will place on institutions that choose to "bank" Internet gambling businesses (i.e., having to monitor and know the details of each and every transaction), we believe that many institutions will adopt a policy of not opening accounts for such entities or terminating relationships with current customers they believe to be Internet gambling businesses. To the extent the Agencies consider such acts to constitute the "remedial action" component of the required policies and procedures, we would agree. Indeed, given the lack of functionality existing in the designated payment systems, we cannot envision any remedial action that a bank could reasonably or practically effect under the Proposed Regulation other than ceasing to do business with Internet gambling businesses.

The policies and procedures of non-exempt participants in card systems and money-transmitting businesses are further expected to address ongoing monitoring or testing to detect possible restricted transactions. Examples of such monitoring include (1) monitoring and analyzing payment patterns to detect suspicious patterns of payments to a recipient, and (2) monitoring of websites to detect unauthorized use of the relevant designated payment system, including unauthorized use of the relevant designated payment system's trademarks. We have already discussed the issues involved in analyzing payments made to recipients via the various payment systems and, thus, will only emphasize that the current payment systems are incapable of providing the information required to perform a proper analysis. In regard to the second example of a bank's duty to monitor websites, given the vastness of the Internet, Compass believes the additional burden this requirement would place on institutions is patently unreasonable and far outweighs any benefit such monitoring might actually produce. Further, with respect to unauthorized trademark usage, we query just what it is an institution is to do if it learns of unauthorized trademark usage by an Internet gambling business? At best, such a discovery might be cause for filing a Suspicious Activity Report ("SAR"), but again, any such requirement imposes an entirely inappropriate burden on banks to perform legal analysis of third parties' intellectual property rights -- something Compass asserts is wholly outside the bounds of reasonable expectations.

Lastly, as part of the required policies and procedures, participants in card systems would be required to address methods for identifying and blocking restricted transactions as they are processed. Deemed the "coding" requirement, the Agencies assert their belief that only the card systems have the necessary capabilities and processes in place to allow for such in-process blocking. While card systems can block in-process transactions, as with other requirements under the Proposed Regulation, the ability to perform in-process blocking presupposes that card systems operators will have sufficient knowledge of transaction particulars and the laws involved to determine which transactions to block. Further, even if such information could be captured by coding, it seems to us that the encoder would be in the best position to prohibit or block any restricted transaction before it is sent.

F. Conclusion

The banking community has been presented with a proposed regulation the requirements of which cannot be practically or reasonably accomplished. Given the limitations of the payment systems, we believe no degree of certainty as to the particulars of a transaction can be attained by any exempt or non-exempt participant institutions. A bank might suspect that a particular customer is conducting restricted transactions, but in most cases, such suspicion would be difficult, if not impossible, to confirm. Consequently, we believe the filing of SARs for suspected illegal gambling transactions should be the only requirement under the Act. Such a requirement would reflect the level of knowledge obtainable by banks with respect to any particular transaction, and would avoid placing an undue burden on participants and their customers in the payment systems. Moreover, such a requirement could be easily implemented under the current BSA policies and procedures maintained by banks.

We believe the Proposed Regulation suffers from major problems that, in our opinion, make it unlikely that the purposes of the Act will be fulfilled. Consequently, we urge the Agencies to consider a wholesale rewrite of Regulation GG giving strong consideration to the comments made herein, particularly, the issues surrounding the term "restricted transaction," and the current state of the payment systems in providing institutions with detailed knowledge of the transactions they facilitate.

We thank you for allowing us to comment on the Proposed Regulation, and would be glad to discuss with the Agencies our comments if desired.

Sincerely,

M. Brandon Meadows
Corporate Counsel